

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE H. LOWERY and DEPARTMENT OF DEFENSE,
DLA- DDRE SOUTHERN COMMISSARIES, Memphis, TN

*Docket No. 02-650; Submitted on the Record;
Issued May 21, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that his back condition is causally related to his accepted work injuries of December 10, 1993, March 22, 1994 or April 18, 1998.

On December 14, 1993 appellant, then a 57-year-old store worker, filed a claim for traumatic injury alleging that on December 10, 1993 he sustained injuries to his lower right back and hip when he slipped and fell while pulling a pallet jack in the produce cooler. He returned to work on December 14, 1993. After a delay due to lost documents, the claim was accepted for a lumbar strain on April 13, 1999, but denied for lumbar disc herniation and disability after March 22, 1994.

On March 22, 1994 appellant hit a bump while driving a truck and injured his back. The claim was accepted for a lumbar strain. He returned to work on March 29, 1994 and lost intermittent time after that including from April 28 through May 16, 1994 and March 30 through May 16, 1995.

On April 18, 1998 appellant fell backwards while pulling produce off a rack. The claim was accepted for lumbar strain and right shoulder contusion and he returned to regular duty.

Since 1983 appellant has filed eleven claims. In addition to the accepted claims, he has several underlying medical conditions including multilevel degenerative disc disease and throat cancer that led to his retirement in 1998.

This case has been before the Board on a prior occasion. In a June 24, 2001 decision, the Board remanded the case to be reconstructed and consolidate the records from appellant's accepted back injuries. That decision is incorporated by reference.¹

¹ Docket No. 00 740.

Upon remand the Office referred appellant to Dr. Gordon J. Kirschberg, a neurologist, for a second opinion referral.

On June 16, 2001 Dr. Kirschberg reviewed appellant's medical history and performed a physical examination. In his June 19, 2001 report, he noted that a magnetic resonance imaging (MRI) done following the 1994 injury revealed a degenerative disc disease with a central and paracentral disc herniation at L4-5, but that the herniation was not present in the MRI done in 1998. Dr. Kirschberg found on physical examination there was no limitation of straight leg raising. He found no tenderness over the low back or lumbar spasm. Strength sensation was normal in the lower extremities and reflexes brisk and symmetrical. Dr. Kirschberg found appellant was experiencing some back pain but the pain was not traveling in a distribution consistent with one nerve root.

Dr. Kirschberg opined that appellant's work-related injuries caused or exacerbated lumbar strains and low back pain due to the presence of the degenerative joint disease. He found no objective findings of disc herniation and opined the acute strains had resolved. There were no objective findings that appellant could not perform his regular job. Dr. Kirschberg indicated that appellant would likely have a difficult time working in any sedentary to medium job due to his age and the degenerative disc disease.

No further evidence was submitted.

In a July 2, 2001 decision, the Office denied appellant's claim finding that the medical evidence of record did not support continuing disability resulting from the accepted injuries.

The Board finds appellant has not met his burden of proof to establish disability resulting from his accepted work injuries.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability for which compensation is claimed is causally related to the employment injury.²

The evidence required to establish causal relationship is rationalized medical evidence, based on a complete factual and medical background, showing a causal relationship between the claimed medical condition and the identified factors.³

There is no rationalized medical evidence in the record that supports appellant's contention that his herniated disc was causally related to any of his accepted injuries.

A December 14, 1993 medical note with an illegible signature indicates appellant sought medical treatment and diagnosed a lumbar strain but does not attribute the condition to the incident on December 13, 1993.

² *Duane B. Harris*, 49 ECAB 170 (1997).

³ *Id.*; *Dennis Mascarenas*, 49 ECAB 215 (1997).

In an April 27, 1994 report, Dr. Rhett Murray wrote that appellant injured his back when he slipped “approximately six weeks ago,” but that report does not diagnose herniated disc or explain how his back condition is causally related to any of appellant’s accepted conditions. Nor do any of Dr. Murray’s subsequent reports, that consistently diagnose herniated disc at L4-5, causally link the herniation to appellant’s employment factors.

Rationalized medical reports explaining the causal relationship between appellant’s employment factors and the herniated disc are critical to meeting his burden of proof because appellant has a long medical history including multilevel degenerative disc disease.

The Board finds that the Office properly gave the weight of the medical evidence to Dr. Kirschberg, who reviewed appellant’s entire medical history and conducted a physical examination. He concluded that appellant did not have a herniated disc and that his accepted lumbar strains had resolved. Dr. Kirschberg opined that appellant’s back pains were caused by the degenerative disc disease. He found no objective evidence that appellant’s periods of disability were caused by a work-related herniated disc.

Absent rationalized medical evidence establishing a causal relationship between appellant’s accepted injuries and his subsequent back pain and herniated disc the Board finds that appellant has not met his burden of proof.

The decision of the Office of Workers’ Compensation Programs dated July 2, 2001 is affirmed.

Dated, Washington, DC
May 21, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member